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USA v. Vincent Fumo

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PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 09-3388, 09-3389

UNITED STATES OF AMERICA,

Appellant/Cross-Appellee,

v.

VINCENT J. FUMO,

Appellee/Cross-Appellant.

No. 09-3390

UNITED STATES OF AMERICA,

Appellant,

v.

RUTH ARNAO,

Appellee.

On Appeal from the District Court
for the Eastern District of Pennsylvania
(No. 06-CR-00319)
District Judge: Honorable Ronald L. Buckwalter

Argued May 25, 2011

Before: FUENTES, GARTH, NYGAARD, Circuit Judges

(Opinion Filed: August 23, 2011)

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ORDER AMENDING OPINION

FUENTES, Circuit Judge

IT IS HEREBY ORDERED that the Opinion filed on August 23, 2011 shall be amended. A new footnote #12 will be inserted on page number 59 at the end of the second paragraph under Section A. The text of the footnote is as follows:

Arnao also joins in Fumo's arguments opposing the Government's contention that the District Court erred in failing to apply a 2-level sophisticated means enhancement with regard to the Citizens Alliance fraud. Because we find that the District Court abused its discretion in ruling that the

Citizens Alliance fraud did not involve the use of sophisticated means, the same finding of abuse of discretion applies in Arnao's sentence. Accordingly, the 2b1.1(b)(9)(C) additional enhancement of 2 levels applies in the Guideline calculation for Arnao as well as Fumo.

The numbering of all subsequent footnotes shall be adjusted accordingly.

IT IS FURTHER HEREBY ORDERED that the opinion shall be amended to delete the next to last sentence in Section A on page 59 that reads "Because these revised calculations create a loss that is greater than \$1,000,000, Arnao will receive a 2-level increase in her base offense level under § 2B1.1(b)(I)" , and replace it with the following sentence:

"Because these revised calculations create a loss that is greater than \$1 million, Arnao will receive an additional 2-level increase (thereby totaling 16 levels) in her base offense level under §2B1.1(b)(I)."

By the Court,

/s/ Julio M. Fuentes
Circuit Judge

DATED: September 15, 2011

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